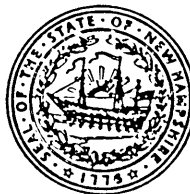


83-11-F

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July 6, 1983

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His Excellency, John H. Sununu  
Governor of the State of New Hampshire  
State House  
Concord, New Hampshire 03301

Your Excellency:

You have asked me to advise you as to the impact of section 153 of House Bill 500 on our opinion to the Comptroller, Michael Cornelius, dated June 28, 1983, concerning reorganization of the Department of Administration and Control. Section 153 provides as follows:

References in Laws of 1983. All references to the position of comptroller and the office of the comptroller in the laws of 1983, with the exception of 1983, 416 which established a department of administrative services, shall be deemed to apply to the commissioner of administrative services or the department of administrative services.

Since references to the Comptroller in the 1983 Session Laws become references to the Commissioner, any powers vested in the Comptroller pursuant to those laws are now vested in the Commissioner. While I have not exhaustively researched such references, I draw your attention to the following chapters:

1983 Laws, C. 120:4, relative to records relating to assigned counsel;

1983 Laws, C. 354:2 relative to the evaluation committee for incentive awards;



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1983 Laws, C. 360 relative to grants for  
retired senior volunteer programs;

1983 Laws, C. 380 relative to the Workmen's  
Compensation Commission;

1983 Laws, C. 469 (HB 500, sections 46 & 47)  
relative to the Division of Risk Management  
and Operational Analysis.

A more difficult question arises when one considers the impact of section 153 on the budget of the Department of Administration and Control, since the budget is a 1983 session law within the meaning of section 153.<sup>1</sup> The budget includes not only the appropriation for the salary of the Comptroller but also the appropriation and thus the authority to expend funds for the operation of the entire department. I do not believe it was the intention of the General Court to substitute the Commissioner for the Comptroller in the line item appropriating the Comptroller's salary. Senate Bill 46, which is excepted from the provisions of section 153, specifically provides that the salary of the Commissioner shall be as specified in RSA 94:1-a. It further provides that once the new Department of Administrative Services becomes operational, the Comptroller shall continue at his existing salary, but as the director of the Division of Accounting Services. See RSA 21-G:3, III as inserted by 1983 Laws, C. 416:4; 1983 Laws, C. 416:50. If the budgetary reference to the salary of the Comptroller were interpreted to refer to the new Commissioner, there would be no appropriation to pay the Comptroller for the transition period. An interpretation that the Comptroller remains in office without salary would create the anomalous situation where the Comptroller is unpaid during the transition process but is paid his current salary at the time he becomes the Director of the Division of Accounting Services. I do not believe the legislature intended such a result. The better

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<sup>1</sup>The Budget includes the Department of Administration and Control as it now exists, with the addition of the Division of Risk Management and Operational Analysis created by 1983 Laws, C. 469 (HB 500, sections 46 and 47).

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view is that the budgetary reference remains unchanged in this instance, particularly in view of the specific provision of Laws of 1983, C. 416.

The appropriation for the entire Department of Administration and Control<sup>2</sup> is a difficult issue. Section 153 makes the appropriation one to the Department of Administrative Services and the Commissioner rather than to the Department of Administration and Control and Comptroller. For the reasons specified in our opinion dated June 28, 1983, I do not believe that the Department of Administrative Services becomes fully operational on July 1, 1983. Furthermore, with the exception of powers conveyed to the Comptroller by the 1983 Session Laws which are now vested in the Commissioner, the Comptroller does not lose his statutory powers and responsibilities on July 1, 1983 since, under the terms of Senate Bill 46 which is excepted from section 153, RSA Chapter 8 remains in effect until implementation is completed. The Comptroller retains these statutory usual powers, subject to the direction and supervision of the Governor and Council in accordance with existing laws. Section 153 simply renames the Department of Administration and Control in a manner consistent with the establishment of the Department of Administrative Services and in contemplation of the future reorganization. In the absence of more explicit language, I cannot conclude that general budgetary references were intended to accomplish significant and substantive changes in the operation of that department and the transition and implementation required by 1983 Laws, C. 372 and 416.

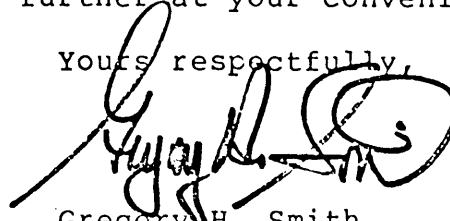
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<sup>2</sup>The budget appropriates funds to the Department of Administration and Control and to the PAU entitled "Office of the Comptroller;" within that department. Read literally, section 153 substitutes the term "Department of Administrative Services" only for the PAU for the Office of the Comptroller. However, section 153 authorizes substitutions for parallel references; in other words, "Comptroller" becomes "Commissioner" and "Office of the Comptroller" becomes "Department of Administrative Services." "Office of the Comptroller" is used synonymously with "Department of Administration and Control." Thus, it is my opinion that the term "Department of Administrative Services," in this instance, is substituted for the term Department of Administration and Control.

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I trust this answers your inquiry. I will be happy to discuss this matter with you further at your convenience.

Yours respectfully,

A handwritten signature in black ink, appearing to read "Gregory H. Smith", written over the typed name.

Gregory H. Smith  
Attorney General

GHS/der

83-F-11